

|              |   |                        |
|--------------|---|------------------------|
| AARON DAVIS, | ) |                        |
|              | ) |                        |
| Petitioner,  | ) |                        |
|              | ) |                        |
| vs.          | ) | Case No. 4:05CV394 CDP |
|              | ) |                        |
| CHUCK DWYER, | ) |                        |
|              | ) |                        |
| Respondent.  | ) |                        |

This matter is before me on the petition of Aaron Davis for a writ of habeas corpus under 28 U.S.C. § 2254. I referred this matter to United States Magistrate Judge Lewis M. Blanton for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1). On January 25, 2008, Judge Blanton filed his recommendation that the petitioner's habeas petition should be denied.

Petitioner objects to the Report and Recommendation. In his objections, petitioner raises the same arguments raised in his petition and argues that Judge Blanton improperly concluded that Grounds 1, 2, and 3 of his petition were procedurally defaulted. Petitioner also claims that Judge Blanton erroneously determined that his petition should be denied. I have conducted a de novo review of the entire file, including all matters relevant to the petition. After careful

consideration, I will adopt and sustain the thorough reasoning of Magistrate Judge Blanton and will deny petitioner's habeas petition.

First, Judge Blanton correctly determined that Grounds 1, 2, and 3 of petitioner's habeas petition are procedurally defaulted because they were procedurally deficient when raised in his motion for post-conviction relief. Judge Blanton also correctly found that these claims failed on the merits. Because Grounds 1, 2, and 3 are procedurally defaulted and because they would also fail on the merits, I will overrule petitioner's objection to the analysis contained in the Report and Recommendation.

With respect to petitioner's claims that are not procedurally defaulted, I agree with Judge Blanton that the state court determination on the merits of these claims was not "contrary to" or an "unreasonable application of" clearly established federal law. 28 U.S.C. § 2254(d)(1). I also agree that petitioner has not shown that the state court determination "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. § 2254(d)(2). Because Judge Blanton correctly decided petitioner's claims, I am overruling petitioner's objections to the Report and Recommendation and will deny habeas relief for the reasons stated in the Report and Recommendation.

I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. See Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997) (citing Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994)).

Petitioner has not made such a showing. Therefore, I will not issue a certificate of appealability.

Accordingly,

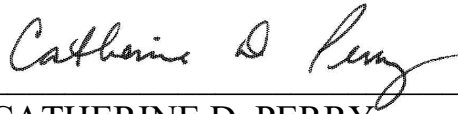
**IT IS HEREBY ORDERED** that the Report and Recommendation filed on January 25, 2008 [#15] is adopted and sustained in its entirety.

**IT IS FURTHER ORDERED** that petitioner's objections to the Report and Recommendation [#16] are overruled in their entirety.

**IT IS FURTHER ORDERED** that petitioner Aaron Davis's Petition for Writ of Habeas Corpus [#2] is **DENIED**.

**IT IS FURTHER ORDERED** that the Court will not issue a certificate of appealability.

A separate judgment in accordance with this Memorandum and Order is entered this same day.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 19th day of February, 2008.